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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,613	01/09/2002	Gerald W. Skulley	M-12283.	6396
7590	12/24/2003			EXAMINER NGUYEN, TUAN DUC
Peter Hsieh Plantronics, Inc. 345 Encinal Street Santa Cruz, CA 95060			ART UNIT 2643	PAPER NUMBER

DATE MAILED: 12/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/043,613	SKULLEY, GERALD W.	
	Examiner	Art Unit	
	Tuan D. Nguyen	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
 - 4a) Of the above claim(s) 21-26 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10, 12 and 15-20 is/are rejected.
- 7) Claim(s) 11, 13 and 14 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) Interview Summary (PTO-413) Paper No(s) _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-20, drawn to an earphone cushion with a speaker, classified in class 381, subclass 371.
 - II. Claims 21-26, drawn to a material of a cushion for an earphone, classified in class 181, subclass 129.
2. Inventions group I and group II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions group I is directed to an earphone cushion with a speaker and group II is directed to a material of a cushion for an earphone.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Peter Hsieh on 12/15/2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 21-26 are withdrawn from further

consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. This application contains claims 21-26 drawn to an invention nonelected without traverse in this paper. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Objections

6. Claim 1 is objected to because of the following informalities: In line 5 "the output face being resiliently..." should be written as "the output face of the first resilient ring being resiliently...". Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5, 8, 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent number 3,160,717 (Beguin).

Regarding claim 1, Beguin discloses an earphone cushion (22), comprising a first resilient ring (22) having opposite input and output faces, a thickness (see figure

6) between the faces, and an opening (see figure 6) therethrough defining an interior surface between the faces, the input face having associated structure for acoustically coupling the opening to an output face of a speaker (column 3 lines 74-75 item 46), the output face being resiliently conformable to a lateral face of an auricle, and the interior surface flaring outwardly for at least a portion of the thickness (see figure 8).

Regarding claim 2, Beguin also shows wherein the first ring is annular, oval, elliptical, or auricular in shape (figures 6 and 8).

Regarding claim 3, Beguin further shows wherein the interior surface flares out in a direction from the input face to the output face (figure 8).

Regarding claim 4, Beguin also shows wherein the interior surface flares out exponentially (figure 8).

Regarding claim 5, Beguin also discloses wherein the first ring comprises an elastomer (column 3 lines 9-10).

Regarding claim 8, Beguin also shows wherein the elastomer is foamed with at least one of open and closed cells (figure 8).

Regarding claim 15, Beguin further shows a speaker having an output face acoustically coupled to the opening of the cushion at the input face thereof (figure 8).

Regarding claim 16, Beguin also discloses means for acoustically coupling the output face of the cushion to a lateral face of an auricle of a listener (column 3 lines 9-14).

Art Unit: 2643

Regarding claim 17, Beguin further discloses wherein the means for acoustically coupling the output face of the cushion to a lateral face of an auricle of a listener comprises a resilient, arcuate band (column 3 lines 1-5) having a first end attached to the at least one earphone.

9. Claims 1, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. patent number 4,523,661 (Scalzo et al).

Regarding claim 1, Scalzo et al discloses an earphone cushion (64), comprising a first resilient ring (64) having opposite input and output faces, a thickness (see figure 2) between the faces, and an opening (see figure 2) therethrough defining an interior surface between the faces, the input face having associated structure for acoustically coupling the opening to an output face of a speaker (50), the output face being resiliently conformable to a lateral face of an auricle, and the interior surface flaring outwardly for at least a portion of the thickness (see figure 2).

Regarding claim 10, Scalzo et al also shows wherein the structure associated with the input face of the first ring for acoustically coupling the opening in the first ring to an output face of a speaker comprises the output face of the speaker having an associated flange, the opening at the input face of the first ring being configured to resiliently receive the output face of the speaker in a complementary, slide-in, elastic engagement, and the interior surface of the first ring having a flange-retaining recess located adjacent to the input face of the ring

and configured to resiliently receive the flange of the speaker in a complementary, over-center, elastic engagement (see figure 2).

Regarding claim 12, Scalzo et al also shows wherein the first ring has at least one circumferential recess between the output face thereof and the flange-retaining recess in the interior surface thereof (see figure 2).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent number 3,160,717 (Beguin) in view of U.S. patent number 6,099,894 (Holman).

Regarding claims 6, 7 and 9, Beguin does not discloses a specific material for the cushion such as Frisby Thermasorb microcapsules or Frisby Comfortemp. However, the Frisby Thermasorb microcapsules is well known for instant, Holman teaches a gel-coated microcapsules assigned to Frisby Technologies, Inc. for providing thermal control in a wide variety of environments (abstract). Therefore, it would have been obvious to a one skilled in the art at the time of the invention was made to use the well known material by Holman in Beguin.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent number 3,160,717 (Beguin).

Regarding claims 18-20, Beguin does not disclose a microphone, a boom and a microphone's wire.

However, a microphone, a boom and a microphone's wire are well known in the art.

Therefore, it would have been obvious to a one skilled in the art at the time of the invention was made to use the well known microphone, boom and wire in Beguin.

Allowable Subject Matter

12. Claims 11, 13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan D. Nguyen whose telephone number is (703) 305-7168. The examiner can normally be reached on M-F 6:30-3:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (703) 305-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:

Commissioner of patents and trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9306, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).



CURTIS KUNTZ
SUPPLYING PATENT EXAMINER
TECHNOLOGY CENTER 2600

TDN
12/17/03